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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

GRANT HOUSE, *et al.*,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION, *et al.*,

Defendants.

No. 4:20-cv-03919 CW

CLASS ACTION

**JOINT RULE 26(f) REPORT AND  
INITIAL CASE MANAGEMENT  
CONFERENCE STATEMENT**

TYMIR OLIVER, *et al.*,

Plaintiffs,

v.

NATIONAL COLLEGIATE ATHLETIC  
ASSOCIATION, *et al.*,

Defendants.

No. 4:20-cv-04527 CW

CLASS ACTION

Pursuant to Federal Rule of Civil Procedure 26(f), Civil Local Rule 16-9, and the Standing Order for all Judges of the Northern District of California, Counsel for Plaintiffs Grant House, Sedona Prince, and Tymir Oliver (“Plaintiffs”) and Defendants National Collegiate Athletic Association, Pac-12 Conference, The Big Ten Conference, Inc., The Big 12 Conference, Inc., Southeastern Conference, and Atlantic Coast Conference (“Defendants,” and collectively with Plaintiffs, “the Parties”) in the above-referenced actions submit this Joint Rule 26(f) Report and Initial Case Management Conference Statement in advance of the initial Case Management Conference scheduled for November 18, 2020. The Parties met and conferred as required by Rule 26(f) on October 27, 2020.

## I. JURISDICTION AND SERVICE

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1367. Venue is proper in this District pursuant to 28 U.S.C. § 1391 and 15 U.S.C. §§ 15, 22. Defendants do not dispute personal jurisdiction. All Defendants in *House* have been served, and Defendants in *Oliver* waived service.

## II. FACTS

### Plaintiffs’ Statement of Facts

Plaintiffs bring these actions both individually and on behalf of damages and injunctive relief classes, alleging that the Defendants have unlawfully conspired to fix the terms NCAA schools offer to Division I student-athletes, which prohibit all student-athletes from receiving anything of value for the commercial use of their names, images, and likenesses (“NILs”). By collectively agreeing to prohibit student-athletes from receiving any compensation whatsoever in connection with the commercial use of their NILs, and further agreeing to boycott any school that offers its athletes NIL-related compensation or the opportunity to receive NIL compensation from third parties, Defendants have artificially restrained competition among NCAA schools solely to protect their own financial interests and to enhance the revenues generated through the use of student-athlete NILs for themselves and their for-profit business partners.

Defendants' conduct is blatantly anticompetitive and exclusionary, foreclosing schools from competing freely for the best college recruits and depriving student-athletes of the ability to capitalize on their NIL rights at the very time those rights are most valuable, value that will quickly diminish after graduation. Moreover, the facts alleged show that there are no procompetitive justifications for Defendants' restraints, and to the extent they serve any procompetitive objective (they do not), there are less restrictive alternatives. In Defendants' Statement of Facts, *infra*, they repeat the argument from their motion to dismiss that this case is merely a repeat of prior cases. But as explained in Plaintiffs' opposition brief, this argument is wrong for various reasons, including but not limited to because there have been numerous material factual developments since *O'Bannon* and *Alston*. See *House*, ECF No. 102 at 3-12. It is ironic that Defendants are making this argument when recent statements by Defendants themselves in official reports and letters to Congress admit that the current NIL rules are unfair, unnecessary, and should be changed, and many of college sports' most powerful coaches and athletic directors have said the same thing. The facts Plaintiffs allege further indicate that consumer demand for college sports would not suffer if Defendants' rules were changed, and in fact, consumers would become more interested in college sports if these NIL restraints, viewed as exploitative by so many Americans, were scrapped. Based on these allegations, Plaintiffs assert causes of action for violations of the federal antitrust laws and under state common law for unjust enrichment.

#### **Defendants' Statement of Facts**

The Court should be familiar with the facts and claims in this case because it has confronted them several times before. Plaintiffs describe their lawsuit as a challenge to the NCAA's compensation rules that "prohibit all student-athletes from receiving anything of value for the commercial use of their names, images, and likenesses ("NILs")." See *supra* at 1. That is the exact same claim that this Court and the Ninth Circuit resolved in *O'Bannon*. See Defs.' Reply ISO Mot. to Dismiss at 1, *House* ECF No. 103; *Oliver* ECF No. 41. And it is subsumed by the subsequent lawsuit, litigated by Plaintiffs' attorneys here, "to dismantle the NCAA's entire compensation framework." *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, 958 F.3d 1239, 1247 (9th Cir. 2020) ("*Alston*"). Indeed, one of the

1 named Plaintiffs here, Tymir Oliver, was a member of the *Alston* classes. As Defendants have  
 2 explained in their motions to dismiss, Plaintiffs have failed to identify any plausible basis for allowing  
 3 them to recycle that claim yet again.

4 The rules Plaintiffs challenge enhance, rather than restrict, competition. Both this Court and  
 5 the Ninth Circuit have determined that the NCAA's rules are procompetitive because they preserve  
 6 amateurism and thus enhance consumer demand. For that reason, and others that can be further  
 7 explained if this case proceeds, the Court should reject Plaintiffs' third attempt to invalidate NCAA  
 8 rules regulating the compensation student-athletes can receive.

### 9 **III. LEGAL ISSUES**

10 This case raises the following legal issues, among others:

- 11 1. Whether the proposed Class and Sub-Classes identified in *House* and *Oliver* should be
- 12 certified pursuant to Fed. R. Civ. P. 23;
- 13 2. Whether or not Defendants' conduct is (a) unlawful under the Sherman Act; and/or
- 14 (b) gives rise to claims for unjust enrichment;
- 15 3. Whether or not Plaintiffs and other members of the respective proposed Class/Sub-
- 16 Classes were injured by Defendants' alleged unlawful conduct and, if so, the appropriate
- 17 measure of damages; and
- 18 4. Whether or not Plaintiffs and other members of the respective proposed Class and Sub-
- 19 Classes are entitled to, among other things, declaratory and/or injunctive relief, and if so,
- 20 the nature and extent of such declaratory and/or injunctive relief.

### 21 **IV. MOTIONS**

22 On September 11, 2020, Defendants filed a motion to dismiss Plaintiffs' complaints. *See* ECF  
 23 Nos. 101 (*House*) and 35 (*Oliver*). This motion is fully briefed and set for hearing on November 18,  
 24 2020. The Parties currently anticipate the following future motions: a motion for class certification,  
 25 motions for summary judgment and/or summary adjudication, and possible motions regarding the  
 26 scope of discovery.

1 **V. AMENDMENT OF PLEADINGS**

2 Consolidation of the substantively identical *House* and *Oliver* complaints is likely appropriate  
 3 subject to the Court's ruling on Defendants' motion to dismiss, and Plaintiffs are prepared to timely  
 4 file a consolidated complaint following the Court's ruling on such motion if appropriate. Plaintiffs do  
 5 not presently anticipate any further substantive amendments to the pleadings but reserve all rights in  
 6 this regard depending on the Court's orders and/or if additional information comes to light.

7 **VI. EVIDENCE PRESERVATION**

8 The Parties have reviewed the Guidelines Relating to the Discovery of Electronically Stored  
 9 Information and agree to take reasonable and necessary steps to preserve evidence relevant to the  
 10 issues reasonably evident in this action.

11 **VII. DISCLOSURES**

12 Pursuant to a stipulation, ECF Nos. 114 (*House*) and 77 (*Oliver*), the Parties anticipate  
 13 exchanging initial disclosures on November 13, 2020.

14 **VIII. DISCOVERY**

15 The Parties met and conferred regarding case management and discovery issues on October  
 16 27, 2020, pursuant to Fed. R. Civ. P. 26(f). The Parties plan to enter into a modified version of the  
 17 Northern District of California Model Stipulated Order Re: Discovery of Electronically Stored  
 18 Information and further intend to enter a stipulated protective order pursuant to Fed. R. Civ. P. 26(c).

19 **Plaintiffs' Statement**

20 Plaintiffs anticipate seeking production of any documents and information relevant to the  
 21 claims and defenses in this action, including but not limited to documents and information relating  
 22 to: the appropriate definitions of relevant antitrust markets, Defendants' market power, the effects of  
 23 Defendants' conduct on the relevant markets, the application and enforcement of Defendants'  
 24 restraints, Defendants' purported procompetitive justifications for their restraints, the availability of  
 25 any less restrictive alternatives, and the availability and measure of damages and other relief to  
 26 Plaintiffs and members of the Class. Fact and expert discovery is also required with respect to class  
 27 certification. In addition to propounding written discovery, Plaintiffs expect the Parties to prepare for  
 28

1 and conduct depositions, including depositions of the named defendants and named plaintiffs, current  
 2 and former employees of Defendants, and other third parties. Plaintiffs are likely to notice and  
 3 conduct depositions pursuant to Fed. R. Civ. P. 30(b)(6). Plaintiffs expect that numerous records will  
 4 be produced by third parties in connection with this action.

5 ***Fact discovery should commence immediately:***

6 Plaintiffs believe that fact discovery should commence immediately. Under the Federal  
 7 Rules, the only event required to trigger the commencement of discovery is a Rule 26(f) conference  
 8 between the parties. That occurred on October 27, 2020. Defendants take the position that discovery  
 9 should be stayed indefinitely until the Court rules on Defendants' motion to dismiss. Plaintiffs  
 10 respectfully disagree for the following reasons.

11 *First*, because the Parties already conducted their Rule 26(f) conference, discovery is now  
 12 open, and any request to stay discovery should be made, if at all, on a noticed motion. Requesting  
 13 that discovery be stayed in a Joint Rule 26(f) Report is not the proper procedure for seeking relief  
 14 from discovery obligations.

15 *Second*, staying discovery pending the outcome of a motion to dismiss is disfavored by courts  
 16 and an exception to the normal procedures, reserved for circumstances that are not present here.  
 17 "Had the Federal Rules contemplated that a motion to dismiss under Fed. R. Civ. P. 12(b)(6) would  
 18 stay discovery, the Rules would contain a provision to that effect. In fact, such a notion is directly at  
 19 odds with the need for expeditious resolution of litigation." *Skellerup Indus. Ltd. V. City of L.A.*, 163  
 20 F.R.D. 598, 600-01 (C.D. Cal. 1995). As courts have observed, "such motions are disfavored  
 21 because discovery stays may interfere with judicial efficiency and cause unnecessary litigation in the  
 22 future." *White v. E-Loan, Inc.*, 2006 WL 2850041, at \*2 (N.D. Cal. Oct. 5, 2006); *see also In re*  
 23 *Apple In-App Purchase Litig.*, 2012 U.S. Dist. LEXIS 18970, at \*3 (N. D. Cal. Feb. 15, 2012)  
 24 (same); *Mlejnecky v. Olympus Imaging Am., Inc.*, 2011 WL 489743, \*6 (E.D. Cal. Feb. 7, 2011)  
 25 (courts "look unfavorably" upon blanket stays of discovery pending a motion to dismiss).  
 26 Accordingly, the burden is on Defendants to make a "strong showing" of "good cause" justifying a  
 27 departure from the liberal discovery principles reflected in the Federal Rules. *See Blankenship v.*  
 28

1 *Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975) (those opposing discovery carry a heavy burden of  
 2 showing why discovery should be denied). To show “good cause,” Defendants must show more than  
 3 an apparently meritorious 12(b)(6) claim: “A district court may ... stay discovery when it is  
 4 *convinced* that the plaintiff will be unable to state a claim for relief.” *Wood v. McEwen*, 644 F.2d  
 5 797, 801 (9th Cir. 1981) (emphasis added).

6 As Defendants point out, some courts have applied a two-prong test to determine whether  
 7 discovery should be stayed pending resolution of a dispositive motion. Equally important, however,  
 8 is the manner in which this test has been applied by those courts: “In applying this two-factor test,  
 9 the court must take a ‘preliminary peek’ at the merits of the pending dispositive motion to assess  
 10 whether a stay is warranted.” *In re Nexus 6p Prods. Liability Litig.*, 2017 WL 3581188, at \*1 (N.D.  
 11 Cal. Aug. 18, 2017).<sup>1</sup> Plaintiffs respectfully submit that a “preliminary peek” into the merits of  
 12 Defendants’ pending motion to dismiss reveals that the likelihood of dismissal is far from strong—as  
 13 must be shown to support a blanket discovery stay. Defendants’ motion asks the Court to dismiss  
 14 Plaintiffs’ lawsuits based on arguments similar to those rejected in the *O’Bannon* and *Alston* cases  
 15 (such as to *stare decisis*, see *House*, ECF No. 102 at 3-12), and to resolve inherently factual issues  
 16 related to the elements of Plaintiffs’ claims, including the definition of the “relevant market” and  
 17 other matters not typically resolved on summary judgment, let alone on a Rule 12 motion.

18 *Third*, staying discovery would prevent the productive advancement of this case while the  
 19 Parties wait for a decision on the motion to dismiss. Without discovery, the Parties cannot effectively  
 20 evaluate whether an early settlement is warranted, and thus a stay could needlessly lengthen these  
 21 proceedings.<sup>2</sup> Furthermore, “discovery would not be wasted even if the Motion to Dismiss is granted  
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23 <sup>1</sup> Notably, in the cases Defendants cite, a stay of discovery was granted only after the court had  
 24 already granted a motion to dismiss or otherwise found the plaintiff’s complaint to be obviously  
 25 deficient. See *In re Netflix Antitrust Litig.*, 506 F. Supp. 2d 308 (N.D. Cal. 2007) (granting limited  
 26 stay pending amendment of complaint after the court had already granted motion to dismiss  
 27 plaintiffs’ claims); *Reveal Chat Holdco, LLC v. Facebook, Inc.*, 2020 WL 2843369, at \*3 (N.D. Cal.  
 Apr. 10, 2020) (granting stay based on court’s conclusion that “Facebook’s motion to dismiss  
 presents strong arguments, which could prove difficult for Plaintiffs to overcome, even considering  
 that leave to amend is freely given”); *Braun v. Yahoo*, 2018 WL 10809622 (N.D. Cal. Mar. 28, 2018)  
 (granting stay after the court had already granted motion to dismiss with leave to amend).

28 <sup>2</sup> Defendants suggest that because the hearing on the motion to dismiss is scheduled for  
 November 18, 2020, a stay of discovery would be inconsequential. But Defendants are not asking for

1 since [Plaintiff] could utilize the discovery responses to prepare an amended pleading.” *San*  
 2 *Francisco Tech. v. Kraco Enterprises LLC*, 2011 WL 2193397, at \*3 (N.D. Cal. June 6, 2011). There  
 3 is no basis to delay discovery.

4 ***The Court should set a discovery schedule now and all discovery should proceed***  
 5 ***simultaneously without bifurcation:***

6 Contrary to Defendants’ argument, Plaintiffs respectfully submit that the Court should set a  
 7 discovery schedule now so the Parties can work toward timely resolution of this case. For all the  
 8 reasons explained above, and consistent with Federal Rule of Civil Procedure 1’s goal of ensuring  
 9 “the just, speedy, and inexpensive determination” of this case, setting a schedule and commencement  
 10 of discovery without delay is appropriate.

11 Plaintiffs also submit that the Court should similarly reject Defendants’ suggestion that  
 12 bifurcated discovery may be warranted, and should instead allow all discovery to proceed  
 13 simultaneously. This case is no different than the countless other class actions in which merits and  
 14 class discovery proceed concurrently.

15 Among the matters the court may consider in deciding whether to bifurcate are: (1) the  
 16 overlap between individual and class discovery, (2) whether bifurcation will promote Federal Rule of  
 17 Civil Procedure 23’s requirement that certification be decided at “an early practicable time,” (3)  
 18 judicial economy, and (4) any prejudice likely to flow from the grant or denial of a stay. *See True*  
 19 *Health Chiropractic Inc. v. McKesson Corp.*, 2015 WL 273188, at \*1 (N.D. Cal. Jan. 20, 2015) (the  
 20 overlap between individual and class discovery weighs against bifurcation); *see also Gray v. First*  
 21 *Winthrop Corp.*, 133 F.R.D. 39, 41 (N.D. Cal. 1990) (“An order staying discovery pending class  
 22 certification would be unworkable, since plaintiffs must be able to develop facts in support of their  
 23 class certification motion. An order restricting discovery to class issues would be impracticable  
 24  
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26 a stay until the hearing. Rather, they want a stay until the motions are *resolved*. If a stay is imposed,  
 27 this case will be at a complete standstill until a ruling is issued, needlessly protracting this litigation,  
 28 which began with the initial *House* Complaint that was filed on June 15, 2020, five months ago.  
 Plaintiffs are ready to move forward with discovery. *See* Plaintiffs’ scheduling proposal at Section  
 VII, *infra*.



1 because of the closely linked issues, and inefficient because it would be certain to require ongoing  
2 supervision of discovery.”).

3 Defendants’ discussion of the (potential) appropriateness of bifurcation falls far short of  
4 meeting their heavy burden of demonstrating that bifurcation is warranted. Indeed, their generic  
5 speculation about the “viability” of Plaintiffs’ class damages claims is unfounded and, in any case, is  
6 not an appropriate basis for bifurcation. *See Gray*, 133 F.R.D. at 40 (denying defendants’ request for  
7 stay of discovery and explaining that argument regarding the unlikelihood of class certification was  
8 an improper attempt to “litigate prematurely the sufficiency of the complaint and the appropriateness  
9 of class certification”). As the Supreme Court made clear in *Wal-Mart v. Dukes*, district courts must  
10 conduct a “rigorous analysis” to ensure that the requirements of Rule 23 have been met and,  
11 “[f]requently that ‘rigorous analysis will entail some overlaps with the merits of the plaintiff’s  
12 underlying claim. That cannot be helped. The class determination generally involves considerations  
13 that are enmeshed in the factual and legal issues comprising the plaintiff’s cause of action.’” 564 U.S.  
14 338, 351 (2011). To the extent that *Dukes* requires this Court to make a preliminary inquiry into the  
15 merits in deciding whether to certify the putative classes, Plaintiffs must be permitted to conduct  
16 merits-based discovery prior to their motion for class certification. Because questions concerning  
17 class certification and the underlying merits of the case overlap in this case, Plaintiffs would be  
18 unfairly hindered in their ability to make a case for class certification without the opportunity for  
19 comprehensive discovery. Indeed, Plaintiffs anticipate that Defendants will likely demand exacting  
20 evidence relating to the merits of Plaintiffs’ claims at the certification stage—evidence Plaintiffs will  
21 be unable to produce if denied access to merits discovery.

22 Because class and merits discovery are not easily or meaningfully definable or severable,  
23 bifurcation will not promote judicial economy and would serve only to further complicate this  
24 litigation by requiring unnecessary motion practice and frequent intervention by the Court. Courts in  
25 this District routinely deny attempts to bifurcate where doing so would result in an inefficient waste  
26 of judicial resources. For example, the Court in *Chao v. Aurora Loan Services* denied a motion for  
27 phased discovery for this very reason, explaining that the defendant’s proposal “would be  
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unworkable because the certification-based evidence and merits-based evidence... is intertwined, and inefficient because bifurcation would require ongoing supervision of discovery, including the resolution of disputes concerning whether discovery is certification-based or merits-based.” 2011 U.S. Dist. LEXIS 143356, at \*3 (N.D. Cal. Dec. 13, 2011).

Defendants’ discussion of the potential appropriateness of bifurcation falls far short of meeting their heavy burden of demonstrating that bifurcation is warranted. Indeed, apart from their generalized assertion that the class- and merits-based evidence in this case will be different, Defendants offer no explanation as to how the Parties or the Court can disentangle class discovery from merits discovery. Defendants’ argument is further misplaced given that, at this stage, there is no reason to believe that denial of class certification would terminate this litigation and merits-based discovery would still be of evidentiary value if the cases continue absent certification.

### **Defendants’ Statement**

Defendants believe that the discovery Plaintiffs envision is overbroad and should not commence until this Court has ruled on the motion to dismiss.<sup>3</sup> The Court has “broad discretion to stay discovery pending the resolution of a potentially dispositive motion, including a motion to dismiss.” *In re Netflix Antitrust Litig.*, 506 F.-Supp.-2d 308, 321 (N.D. Cal. 2007) (citing *Jarvis v. Regan*, 833 F.2d 149, 155 (9th Cir. 1987)). “[T]he Supreme Court has recognized that staying discovery may be particularly appropriate in antitrust cases, where discovery tends to be broad, time-consuming, and expensive.” *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 127 S.-Ct. 1955, 1967 (2007)); *see also id.* (maintaining previously imposed discovery stay pending motion to dismiss “except for [one] specific narrowly-tailored request”).

Courts in this District apply a two-pronged test in determining whether a stay is warranted: “First, a pending motion must be potentially dispositive of the entire case, or at least dispositive on the issue at which discovery is directed.” *Reveal Chat Holdco, LLC v. Facebook, Inc.*, No. 20-cv-

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<sup>3</sup> Plaintiffs’ leading argument against delaying discovery until after resolution of the motion to dismiss is that this issue must be presented through a formal motion. Because the Northern District’s Standing Order requires the parties to address discovery and scheduling in this joint statement, Defendants have raised the issue here.

000363-BLF, 2020 WL 2843369, at \*2 (N.D. Cal. Apr. 10, 2020) (internal quotation marks omitted) (granting motion to stay discovery). “Second, the court must determine whether the pending motion can be decided absent additional discovery.” *Id.* (internal quotation marks omitted). Both prongs are met here; Defendants have moved to dismiss the entire case as an effort to pursue twice-adjudicated claims, as well as individual claims to which broad-ranging discovery may be “directed.” *Id.* No factual development is needed to evaluate that motion.

Further, the hearing on the motion is one week away and waiting to commence discovery until this Court issues a decision will not prejudice Plaintiffs. Their proposed case schedule would run into at least 2023, so deferring the start of this discovery until the Court issues its motion to dismiss decision will not cause meaningful delay. Instead, waiting will benefit all parties and the Court. If the Court grants Defendants’ motion, there is no need for any party to incur the further burdens of discovery. Even if outright dismissal of both complaints were not granted, Defendants have moved to dismiss Plaintiffs’ Group Licensing Damages Sub-Class claim, dismissal of which would significantly reduce the scope of potential discovery in this case. And how the Court defines any claim that might go forward will provide useful guidance on the scope of discovery. *In re Nexus 6p Prods. Liability Litig.*, No. 17-cv-02185-BLF, 2017 WL 3581188, at \*2 (N.D. Cal. Aug. 18, 2017) (granting a three-month discovery stay pending motion to dismiss hearing in part because the court “anticipate[d] that it will be able to provide significant guidance to the parties about the scope of the pleadings that will be allowed to go forward at the time of the . . . hearing”).

Courts have not hesitated to stay discovery in circumstances similar to those in this case. *See Braun v. Yahoo*, No. 17-cv-06294-SVK, 2018 WL 10809622, at \*4 (N.D. Cal. Mar. 28, 2018) (“In most cases, . . . plaintiffs must satisfy the pleading requirements of Rule 8 before the discovery stage, not after it.”) (internal quotations omitted) (citing *Mujica v. Airscan, Inc.*, 771 F.3d 580, 593 (9th Cir. 2014)); *Cellwitch, Inc. v. Tile, Inc.*, No. 4:19-CV-01315, 2019 WL 5394848, at \*2 (N.D. Cal. Oct. 22, 2019) (granting motion to stay discovery where motion to dismiss “ha[d] the potential to be dispositive,” the party seeking discovery had not demonstrated it would suffer harm from a brief discovery stay, and a stay would conserve judicial resources).

For similar reasons, Defendants respectfully submit that there is no need for the Court to set a discovery schedule now. To the extent the Court allows any claims to go forward, knowing the scope of those claims would allow the parties to have a more informed discussion of the timetable for litigating this case. In a similar vein, Defendants may seek to bifurcate discovery into separate class and merits phases depending on this Court's resolution of the motion to dismiss.<sup>4</sup> If both damages claims remain pending, bifurcation could, at minimum, enhance judicial economy by providing the parties and the Court information on the viability of Plaintiffs' class damages claims. And contrary to Plaintiffs' suggestion, whether they can develop a model capable of showing injury on a classwide basis (a central question at class certification) does not depend on the same evidence as an assessment of whether the NCAA's rules restrain competition and serve procompetitive purposes (which go to the merits). *See Reid v. Unilever U.S., Inc.*, 964 F. Supp. 2d 893, 933 (N.D. Ill. 2013) (bifurcating class and merits discovery, noting questions about whether the named plaintiffs' "alleged injuries are similar to those of the potential class members").

To the extent the Court is inclined to instead enter a schedule now, Defendants reserve the right to move for bifurcation upon receiving the Court's motion to dismiss decision, but otherwise have proposed amendments to Plaintiffs' suggested schedule below.

## IX. CLASS ACTIONS

Plaintiffs believe this matter is suitable for class treatment and intend to move for class certification. The Parties' competing proposals for a class certification briefing schedule are set forth in Section XVII, subject to Defendants' reservation of the right to seek bifurcation of discovery. Defendants believe class treatment is inappropriate and will oppose certification.

## X. RELATED CASES

*Grant House, et al. v. National Collegiate Athletic Association, et al.*, No. 4:20-cv-03919CW

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<sup>4</sup> Plaintiffs' complaint that Defendants failed to "meet[ a] . . . heavy burden of demonstrating that bifurcation is warranted" is obviously misplaced. At this time, Defendants merely identified consistent with Rule 26(f) and Local Rule 16-9 bifurcation as one subject on which a motion might be filed in the future. If and when such a motion is filed, Defendants will meet any applicable burden of persuasion based on the facts as they exist at that time.

*Tymir Oliver, et al. v. National Collegiate Athletic Association, et al.*, No. 4:20-cv-04527 CW  
*In re National Collegiate Athletic Association Athletic Grant-In-Aid Cap Antitrust Litigation*,  
No. 14-md-02541 CW

## **XI. RELIEF**

As detailed further in their complaints, Plaintiffs request that this Court grant them the following relief, *inter alia*:

- A. Actual damages according to the proof at trial;
- B. Treble damages pursuant to 15 U.S.C. § 15;
- C. A declaratory judgment declaring as void the NCAA's Bylaws that operate to impose a restriction on the compensation student-athletes can receive in exchange the commercial use of their names, images, and likenesses;
- D. An injunction restraining Defendants from enforcing their unlawful and anticompetitive agreement to restrict the amount of NIL compensation available to members of the proposed Class;
- E. Plaintiffs' attorneys' fees, costs, and expenses; and
- F. Other such relief that the Court may deem just and equitable.

Defendants contend Plaintiffs are entitled to no relief whatsoever.

## **XII. SETTLEMENT AND ADR**

During the Rule 26(f) conference the Parties discussed the possibility of engaging in ADR and have filed their respective ADR Certifications pursuant to Civil L.R. 3-5. The Parties anticipate stipulating to an ADR process.

## **XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

Plaintiffs respectfully decline assignment to a Magistrate Judge for all purposes.

## **XIV. OTHER REFERENCES**

The Parties agree that this case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation at this time.

## XV. NARROWING OF ISSUES

Plaintiffs do not believe there are any issues that can be narrowed at this time. As discovery progresses, the Parties will consider whether any issues can be narrowed by agreement or motion. Defendants believe that resolution of their Motion to Dismiss may narrow the scope of the issues in the case.

## XVI. EXPEDITED TRIAL PROCEDURE

The Parties agree that this case is not suitable for the expedited trial procedure of General Order No. 64.

## XVII. SCHEDULING

As noted above, the Parties have met and conferred but are unable to agree upon a comprehensive schedule at this point. Accordingly, the Parties present separate proposals for the Court's consideration, as set forth below:

EVENT	PLAINTIFFS' PROPOSED DEADLINE	DEFENDANTS' PROPOSED DEADLINE
Rule 26(f) conference	Oct. 27, 2020 (completed)	Oct. 27, 2020 (completed)
Discovery to commence	Oct. 28, 2020 <sup>5</sup>	Upon final ruling on motion(s) to dismiss
Exchange of initial disclosures	Nov. 13, 2020	Nov. 13, 2020
Initial Case Management Conference	Nov. 18, 2020 at 2:30 p.m.	Nov. 18, 2020 at 2:30 p.m.
Hearing on Defendants' Motion to Dismiss	Nov. 18, 2020 at 2:30 p.m.	Nov. 18, 2020 at 2:30 p.m.
Parties to submit to Court, Stipulated Order re Discovery of Electronically Stored Information and Stipulated Protective Order, <i>or</i> submit to Court for resolution all outstanding disputes regarding these otherwise stipulated orders	Dec. 11, 2020	60 days after final ruling on motion(s) to dismiss
Deadline for Plaintiffs to add additional parties or claims, or amend complaint (including the filing of any consolidated complaint)	30 days after ruling on motion to dismiss	30 days after ruling on motion(s) to dismiss
Defendants' Answer	28 days after ruling on motion to dismiss	60 days after final ruling on motion(s) to dismiss

<sup>5</sup> See Plaintiffs' discussion in Section VIII, *supra*.

1	Completion of production of relevant documents from <i>Alston</i> and <i>O'Bannon</i> cases	Mar. 1, 2021; see also "Plaintiffs' Statement" below.	See "Defendants' Statement" below.
2			
3	Substantial Completion of Production of Documents by Parties	June 1, 2021 (Plaintiffs understand "Documents" to include but not be limited to any structured data requested of a Party) <sup>6</sup> ; see also "Plaintiffs' Statement" below.	12 months after final ruling on motion(s) to dismiss; see "Defendants' Statement" below.
4			
5	Class Certification Motion and Supporting Expert Reports	November 22, 2021	17 months after final ruling on motion(s) to dismiss
6			
7	Deadline to Depose Plaintiffs' Class Experts	Jan. 6, 2022	60 days after filing of class certification motion
8			
9	Class Certification Opposition and Supporting Expert Reports	February 4, 2022	90 days after filing of class certification motion
10			
11	Deadline to Depose Defendants' Class Experts	Mar. 5, 2022	30 days after filing of class certification opposition
12			
13	Class Certification Reply and Expert Rebuttal Report	April 4, 2022	60 days after filing of class certification opposition
14			
15	Deadline for Supplemental Depositions of Plaintiffs' Class Experts	No supplemental depositions should be permitted without leave of the Court.	30 days after filing of class certification reply
16			
17	Hearing on Class Certification	To be set by the Court	To be set by the Court
18			
19	Merits Discovery Cut Off	42 days after ruling on class certification	42 days after ruling on class certification
20			
21	Merits Experts Disclosure (including reports) on issues as to which Party bears the burden at trial	42 days after ruling on class certification	35 days after Merits Discovery Cut Off
22			
23	Merits Expert Response	35 days after submission of initial reports	56 days after Merits Expert Disclosure
24			
25	Merits Expert Reply	28 days after responsive reports	28 days after Merits Expert Response
26			
27	Expert Discovery Cut-Off	35 days after reply expert reports	35 days after reply expert reports
28			
	Plaintiffs' dispositive motion / <i>Daubert</i> motions	35 days after close of expert discovery	49 days after close of expert discovery

<sup>6</sup> The Parties will make rolling productions as soon as Documents are ready to be produced. The Parties agree to meet and confer in good faith about the timing and scope of productions.



Defendants' opposition to Plaintiffs' dispositive motion; Defendants' cross-motion; and Defendants' <i>Daubert</i> motions	35 days after Plaintiffs' dispositive motion / <i>Daubert</i> motions	49 days after Plaintiffs' dispositive motion / <i>Daubert</i> motions
Plaintiffs' reply in support of their dispositive motion; opposition to Defendants' cross-motion; opposition to Defendants' <i>Daubert</i> motions	35 days after Defendants' opposition to Plaintiffs' dispositive motion; Defendants' cross-motion; and Defendants' <i>Daubert</i> motions	49 days after Defendants' opposition to Plaintiffs' dispositive motion; Defendants' cross-motion; and Defendants' <i>Daubert</i> motions
Defendants' reply in support of their cross-motion and <i>Daubert</i> motions; opposition to Plaintiffs' <i>Daubert</i> motions	21 days after Plaintiffs' reply in support of their dispositive motion; opposition to Defendants' cross-motion; opposition to Defendants' <i>Daubert</i> motions	28 days after Plaintiffs' reply in support of their dispositive motion; opposition to Defendants' cross-motion; opposition to Defendants' <i>Daubert</i> motions
Plaintiffs' reply in support of their <i>Daubert</i> motions	14 days after Defendants' reply in support of their cross-motion and <i>Daubert</i> motions; opposition to Plaintiffs' <i>Daubert</i> motions	14 days after Defendants' reply in support of their cross-motion and <i>Daubert</i> motions; opposition to Plaintiffs' <i>Daubert</i> motions
Hearing on all dispositive and <i>Daubert</i> motions and further case management conference	To be set by the Court	To be set by the Court
Trial Date	TBD	TBD

### **Plaintiffs' Statement**

Plaintiffs' proposed schedule is contingent on discovery proceeding without further delay, as well as an open and cooperative discovery process.

Plaintiffs' provide the following response to concerns raised by Defendants below about certain deadlines in the schedule: During the Rule 26(f) conference, the Parties discussed the production of documents, and when Plaintiffs sent their *initial* proposed schedule to Defendants, they included the clarification that, with respect to the deadline for "Substantial Completion of Production of Documents by Parties," "Documents" should be understood to include any "structured data" a party agrees to produce. Indeed, that is how the term "Documents" is generally defined in this type of case. Early production of structured data is particularly important because of the substantial work and time required to collect, analyze, and understand such data. Therefore, Plaintiffs believe any



1 schedule that includes a substantial completion of production of documents deadline should  
2 encompass a deadline for production of structured data.

3 During the Rule 26(f) conference, the Parties also discussed the production of documents  
4 from the *Alston* and *O'Bannon* cases. Because documents from these past cases should be easier to  
5 produce than documents not previously produced, Plaintiffs believe it is appropriate to set a deadline  
6 for production of those documents, which are likely to be relevant in this case. Plaintiffs stand ready  
7 to meet and confer with Defendants about the appropriate scope of production of documents from  
8 these cases.

9 **Defendants' Statement**

10 Defendants' proposed schedule is without waiver of their anticipated motion to bifurcate  
11 merits and class discovery, as noted in Section VIII *supra*, and is contingent upon anticipated  
12 cooperation from Plaintiffs to reasonably limit discovery to what is proportionate to the needs of the  
13 case.

14 In addition, Defendants object to two of the entries in Plaintiffs' proposed schedule. The first  
15 is a suggested deadline for "production of relevant documents from *Alston* and *O'Bannon*." Given  
16 the way Plaintiffs have pleaded their claims, Defendants do not necessarily agree that production of  
17 documents from past cases would be appropriate. During the Rule 26(f) conference, the parties  
18 stated their preliminary positions on this issue and agreed to continue negotiations as the case  
19 proceeds. Plaintiffs then inserted a due date for such documents in their schedule on the day this  
20 statement was to be filed. Defendants submit that whether and when such documents should be  
21 produced is a matter to be resolved at a later date, after further negotiation between the parties, and  
22 after this Court rules on the motion to dismiss. Indeed, in *Alston*, the parties agreed to produce  
23 documents from prior cases only after extensive meeting and conferring during discovery.

24 Similarly, Defendants object to Plaintiffs' position that documents include "structured data  
25 requested of a Party." Plaintiffs did not raise this issue during the Rule 26(f) conference and  
26 Defendants submit it should be resolved at a later date after further negotiation.  
27  
28

**XVIII. TRIAL**

Plaintiffs have requested a jury trial. The Parties respectfully submit that it is premature to estimate an expected length of the trial at this time.

**XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

Each Defendant has filed a Certification of Interested Entities pursuant to Civil Local Rule 3-15. Plaintiffs are not corporate parties and are not required to file a disclosure statement under Rule 7.

**XX. PROFESSIONAL CONDUCT**

Counsel for the Parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

**XXI. OTHER**

The Parties have not identified any other matter that may facilitate the disposition of this case.

DATED: November 11, 2020

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**E-FILING ATTESTATION**

I, Steve Berman, am the ECF User whose ID and password are being used to file this document. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that each of the signatories identified above has concurred in this filing.

/s/ Steve W. Berman  
STEVE W. BERMAN

**CERTIFICATE OF SERVICE**

I hereby certify that on November 11, 2020, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List, and I hereby certify that I have caused to be mailed a paper copy of the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List generated by the CM/ECF system.

/s/ Steve W. Berman  
STEVE W. BERMAN